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No. 93-2037

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1993

ALFREDO A., a Juvenile,

Petitioner,

v.

SUPERIOR COURT OF THE STATE OF CALIFORNIA FOR THE COUNTY OF LOS ANGELES,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF CALIFORNIA

PETITIONER'S REPLY TO RESPONDENT'S BRIEF IN OPPOSITION

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ARGUMENT

I

RESPONDENT HAS FAILED TO JUSTIFY DELAYING A JUVENILE'S JUDICIAL DETERMINATION OF PROBABLE CAUSE DUE SOLELY TO AN INTERVENING WEEKEND OR HOLIDAY

Respondent superior court completely fails to address one of the two issues presented by this case. Petitioner has identified two constitutional infirmities in the California Supreme Court's ruling in Alfredo A. v. Superior Court, 6 Cal.4th 1212, 1232, 865 P.2d 56, 26 Cal.Rptr.2d 623 (1994). First, the California Supreme Court has permitted the judicial determination of probable cause ["PCD"] for a juvenile to be delayed for 72 hours, discussed below. Second, and equally important, the California Supreme Court has permitted the PCD to be delayed unnecessarily.

The California Supreme Court has held that the probable cause determination required by Gerstein v. Pugh, 420 U.S. 103, 95 S.Ct. 854, 43 L.Ed.2d 54 (1975) may be conducted in conjunction with a juvenile's arraignment, and that if the arraignment is conducted within 72 hours, no earlier PCD is constitutionally required. Alfredo A. v. Superior Court, supra, 6 Cal.4th at p. 1232 (App., pp. A-24-25). However, California statutes permit that arraignment to be delayed solely due to an intervening weekend or holiday (which are "nonjudicial days"). Cal. Welf. & Inst. Code §§ 631, subd. (a), 632, subd. (a). Accordingly, under Alfredo A., the constitutionally mandated PCD can also be delayed solely due to the intervening weekend or holiday, so long as the PCD is ultimately conducted within 72 hours after arrest.

It is, perhaps, noteworthy that respondent superior court's discussion of the applicable time limits completely fails to mention the additional delays permitted for weekends and holidays. For example, respondent claims that a probation officer must file a petition to declare a minor a ward of the

court "within 48 hours of the time the minor was first taken into custody . . . ." Resp.Br., p. 7. However, the statute provides that the petition must be filed within 48 hours "excluding nonjudicial days." Cal. Welf. & Inst. Code § 631, subd. (b), emphasis added. Respondent asserts that all official functions must be performed "within the initial 72 hour period following the arrest . . . ." Resp.Br., p. 5. However, as petitioner has shown, that 72-hour period excludes "nonjudicial days."

Respondent superior court claims that petitioner has "inferred" that a PCD may be delayed for over 72 hours. Resp.Br., pp. 1-2. If such an implication can be found in the Petition, it was certainly not intended by petitioner. Instead, petitioner has described California's arraignment proceedings in order to demonstrate the constitutional defect in those proceedings and in the California Supreme Court's ruling: if a PCD is conducted in conjunction with an arraignment, then that PCD can be unnecessarily and unconstitutionally delayed solely due to an intervening weekend or holiday.

In County of Riverside v. McLaughlin, 500 U.S. 44, 111 S.Ct. 1661, 114 L.Ed.2d 49 (1991), this Court firmly held if a PCD is not conducted simply due to a weekend or holiday, the resulting delay is "unnecessary," constitutes "delay for delay's sake," and is constitutionally impermissible. Id., 500 U.S. 44, 111 S.Ct. at pp. 1670-1671. While it is the system which fails to guarantee PCDs within 48 hours which is subject to systemic attack, this Court made it clear that any unnecessary delay is constitutionally impermissible, even if the PCD is ultimately conducted within 48 hours:

"This is not to say that the probable cause determination in a particular case passes constitutional muster simply because it is provided within 48 hours. Such a hearing may nonetheless violate Gerstein if the arrested individual can prove that his or her probable cause determination was delayed unreasonably. Examples of unreasonable delay are delays for the purpose of gathering additional evidence to justify the arrest, a delay motivated by ill will against the arrested individual, or delay for delay's

sake." County of Riverside v. McLaughlin, supra, 500 U.S. 44, 111 S.Ct. at p. 1670, emphasis added. "Under Gerstein, jurisdictions may choose to combine probable cause determinations with other pretrial proceedings, so long as they do so promptly." Id., 111 S.Ct. at p. 1671, emphasis added.

Respondent superior court presents no arguments which could conceivably justify holding a juvenile in custody simply because he is arrested or held on a weekend. However, the California Supreme Court has expressly permitted a PCD to be delayed up to 72 hours, merely due to an intervening weekend or holiday, so that it may be conducted along with an arraignment. The California Supreme Court's authorization of such impermissible delay obviously cannot be justified. For this reason alone, this court should grant certiorari.

II

RESPONDENT HAS FAILED TO JUSTIFY DELAYING A JUDICIAL DETERMINATION OF PROBABLE CAUSE SIMPLY BECAUSE THE DETAINEE IS A JUVENILE

To a great extent, respondent superior court repeats the holding of the California Supreme Court, albeit in briefer form, that California's provisions for determining whether any particular juvenile should be detained, including "non-judicial determinations of probable cause" (Resp.Br., p. 4, emphasis added), justify delaying judicial determinations of probable cause for 72 hours, 24 hours longer than permitted for adults.

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Petitioner has already demonstrated the fallacy of this argument. See Pet., pp. 14-17. [1/]

However, one portion of respondent's argument should be addressed. Respondent asserts that it is permissible to delay the constitutionally required PCD for a juvenile because "greater and more demanding non-judicial determinations of probable cause and the different needs for detention prior to that judicial review not only justify the additional time but are more likely to result in early release from detention than a judicial review of probable cause." Resp.Br., p. 4. There are several propositions set forth in this statement, none of which support respondent's position.

Respondent's first claim is that there are "greater and more demanding non-judicial determinations of probable cause . . . ." Respondent cites nothing in support of this claim, which is simply untrue. The only determination of probable cause which needs to be made before a juvenile may be held in custody is that performed by the arresting officer. Cal. Welf. & Inst. Code § 626, subd. (d). Although the probation officer is to review the matter to determine whether the juvenile is subject to release pursuant to California Welfare and Institutions Code section 628, subdivision (a), nothing in California statutory law permits or requires anyone, including the probation officer, to review the arresting officer's determination that there is probable cause to believe the juvenile committed an offense prior to the juvenile's appearance in court. A police officer's probable cause determination is certainly neither a "greater" nor a "more demanding" determination of probable cause than is made by

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[1/] It is also ironic that respondent court refers to the provision of California Welfare and Institutions Code section 851 that a juvenile hall "shall not be treated as a penal institution" and shall be conducted "as nearly like a home as possible" (Resp.Br., p. 6), at the same time that Los Angeles County is constructing "the largest and most jail-like county youth facility in the nation . . . ." Los Angeles Times, Aug. 21, 1994, Pt. 1, pg. 1, col. 5.)

a magistrate. Most importantly, it is the same determination of probable cause which is made in the case of an arrested adult, who remains entitled to have that determination reviewed by a judicial officer without unnecessary delay and within no more than 48 hours.

Respondent's first claim is also irrelevant. The State could put in place myriad levels of non-judicial review of probable cause determinations, and still fail to satisfy the constitutional requirement that the question of probable cause be determined by a judicial officer. No matter how many executive officers may determine or redetermine the issue of probable cause, it still fails to supply the constitutionally required judicial determination of probable cause, and cannot justify delaying that constitutionally required judicial review.

Respondent's second claim is that there are "different needs for detention prior to judicial review . . . ." Respondent does not expand upon this obscure statement. If it is respondent's point that the State may have an interest in detaining a juvenile for reasons other than the juvenile's commission of a criminal offense, this is certainly true, but also irrelevant.

It is clearly correct to state that a minor may be detained based upon circumstances other than his commission of a crime, such as the absence of parents, or abuse by parents. However, the point at issue is that a juvenile cannot constitutionally be detained based upon commission of a criminal offense unless there is probable cause to believe he or she committed such an offense, which must be judicially determined. Indeed, whatever the juvenile's home situation may be, once the minor appears in court he must be released from detention based upon criminal charges if no probable cause is then demonstrated. Cal. Welf. & Inst. Code § 635.

The question presented by this case is not whether a juvenile may be detained under the otherwise applicable laws which permit a juvenile to be removed from his home for his own protection. The question is whether a juvenile may be

detained because he is accused of committing a crime in the absence of a prompt judicial determination that there is probable cause to believe the juvenile committed a crime.

In California there are, of course, legislative provisions for taking juveniles into protective custody in the absence of adequate parental supervision. See Cal. Welf. & Inst. Code § 300, et seq. Such juveniles are detained in facilities and under circumstances quite different from those applicable to juveniles accused of criminal offenses. Indeed, California law specifically prohibits housing those accused of crimes together with those in protective custody. Welf. & Inst. Code § 206. However, the issue addressed in this case is not whether a juvenile must be released if there is no probable cause for his continued detention based upon allegations that he engaged in criminal conduct, but when that release must take place.

If a juvenile is arrested for an offense, and there is no probable cause to believe the juvenile committed that offense, the juvenile must eventually be released from custody based upon the criminal accusation, even under Alfredo A. If the minor is in need of protective services after it is found that there is no probable cause to believe the juvenile engaged in criminal conduct, then the provisions of Welfare and Institutions Code section 300 may be invoked. However, the only question presented by this case is how long a juvenile may be held under the strictures inherent in a detention based upon criminal conduct.

It is obviously correct that a juvenile arrested for a criminal offense should not be released to abusive parents, whether or not the juvenile actually engaged in culpable conduct. However, that has nothing to do with the issue before this court. A juvenile found not guilty of an offense should not be released to abusive parents either. That certainly would not justify a law which permitted the continued detention of all juveniles found not guilty of criminal offenses. The point is that a juvenile accused of a crime cannot be detained upon the basis of such an accusation in the absence of a prompt judicial determination of probable cause.

The fact that there may be other grounds which would apply to protect a juvenile from abuse even if the juvenile had not committed a crime does not defeat or even address the proposition that a juvenile who is being held in custody upon the allegation that he committed a criminal act is entitled to a prompt judicial determination of probable cause for that allegation.

Indeed, the sooner it is determined that a minor was arrested without probable cause to believe he committed an offense, the sooner proceedings will be taken to protect the juvenile from further abuse, if that is necessary. Once it was determined that the juvenile had not committed an offense, a petition to protect the minor could immediately be filed pursuant to California Welfare and Institutions Code section 300. Most importantly, once it is determined that a there is no probable cause to believe a juvenile committed a crime, the juvenile can then be placed in a suitable protective setting. Such a juvenile has no place in a Juvenile Hall designed for those accused of crimes, and should be removed from Juvenile Hall as soon as possible, not after a three-day delay.

No consideration of the "different needs for detention" applicable to juveniles can possibly result in any logical or reasonable conclusion that the judicial determination of whether there is probable cause to believe a juvenile committed an offense may be or should be delayed. As Justice George forcefully stated in dissent below, "[T]he need for a very prompt judicial determination of probable cause may be a more crucial factor in assessing the 'reasonableness' of the 'seizure' of a juvenile than of an adult, because the consequences of a relatively brief, wrongful incarceration are likely to be more detrimental and long-lasting to an innocent, vulnerable child than to an adult." Alfredo A. v. Superior Court, supra, 6 Cal.4th at p. 1258, George, J., dis. (App., p. A-61).

Finally, respondent court asserts that the non-judicial procedures established by California statute are "more likely to result in early release from detention than a judicial review

of probable cause." This claim is also untrue, at least as applied to juveniles who are entitled to release because they have been arrested without probable cause, who are the only detainees under consideration in this case. Such a juvenile will not have been detained unless a police officer thought there was probable cause. Consequently, it will not be until a judicial officer reviews the matter that the juvenile will be released due to the absence of probable cause.

Moreover, the argument is irrelevant. It is true that some juveniles may be released for reasons other than a determination that there is or is not probable cause to believe they committed an offense. However, adults who can post bail will also be released whether or not they committed an offense, and sometimes earlier than a judicial probable cause determination could be made. The availability of bail certainly does not justify extending the detention of adults in custody who cannot post bail, but who have committed no offense.

Similarly, that a juvenile who has committed an offense might be released sooner is of cold comfort to a juvenile who has not committed an offense, but must languish in custody for an additional 24 hours before obtaining his rightful and inevitable release, because he is one of the many juveniles who are not released even after application of the statutes. The availability of procedures that may result in a minor's release whether or not an offense has been committed has no logical connection to the issue of whether a juvenile arrested without probable cause may be detained for 72 hours.

The point is that the concern in this case is not "early release," but detention without probable cause. Respondent superior court has failed to point to any state interest or any goal of the juvenile justice system which is advanced by detaining juveniles in custody without a judicial determination of probable cause for such detention, in excess of 48 hours, and when that delay is constitutionally unnecessary. Juveniles and adults who are arrested with probable cause will remain in custody no matter when the PCD is conducted, except for those adults who can post bail (an option

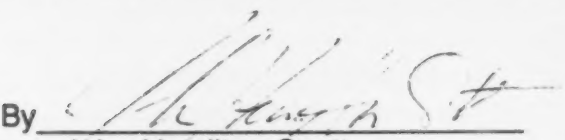
unavailable to juveniles). Thus, the sole result of the procedures authorized by the California Supreme Court, and defended by respondent superior court, is that juveniles arrested without probable cause may be held in custody longer than adults arrested without probable cause. There is no constitutional basis for such a distinction, nor any demonstrated need for the disparity. Accordingly, this Court should grant the pending petition for writ of certiorari.

CONCLUSION

The petition for writ of certiorari should be granted.

Respectfully submitted,

MICHAEL P. JUDGE, PUBLIC DEFENDER
OF LOS ANGELES COUNTY, CALIFORNIA

By 
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